

Remarks:

Claims 46-52 are currently pending in the application. Through the Remarks that follow, Applicants remove all grounds for rejecting the pending claims.

Non-Statutory Double Patenting Rejections

(a) Claims 46 and 51 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 27 and 28 of co-pending Application No. 10/406,720¹ (the '720 application), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is improper under 35 USC 121. The '720 application (Atty. Docket No. 6080-P39DIV1) and the instant application (Atty. Docket No. 6080-P39DIV5) are each divisional applications of common parent Application No. 09/565,138 (the '138 application, Atty. Docket No. 6080-P39), now U.S. Patent No. 6,723,428, and were filed as a result of a restriction requirement received in the parent application. MPEP §804, par. II states that "a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application under 35 U.S.C. 121."

Applicant, thus, respectfully requests reconsideration and withdrawal of this ground for rejection.

(b) Claims 46, 48-49 and 51-52 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 87, 90 and 92-94 of co-pending Application No. 10/655,330² (the '330 application), assigned to the assignee of the present application.

¹ The instant Action identifies this as "10/406,270", however Applicants presume that the reference intended is "10/406,720."

² The instant Action identifies this as "10/655,271", however Applicants presume that the reference intended is "10/655,330"

Applicant respectfully submits that this double patenting rejection is similarly improper under 35 USC 121. The '330 application (Atty. Docket No. 6080-P43) is also a divisional application of the parent '138 application that was similarly filed as a result of the restriction requirement received during the prosecution of the parent '138 application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection

(c) Claims 46-49 and 51-52 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 30-31, 45, and 55-59 of co-pending Application No. 10/762,920 (the '920 application), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '920 application (Atty. Docket No. 6080-P39B) is another divisional application of the common parent '138 application, and was filed as a result of the restriction requirement received in the parent application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

Claims 48 and 51-52 were not rejected under §103 rejection described below or any other rejection beyond the provisional double patenting rejection described above, thus, it is assumed that the status of said claims was 'objected to' as depending from a provisionally rejected based claim. This ground for rejection having been removed, it is respectfully asserted that claims 48 and 51-52 are now in a condition for allowance.

Claim rejections under 35 USC § 103

Claims 46-47 and 49-50 were rejected under 35 USC § 103(a) as being unpatentable over Rock et al., U.S. Patent No. 6,194,332 (Rock) in view of Emi et al., U.S. Patent No. 4,784,909 (Emi.)

The instant Action states that Rock teaches a multi-layer fabric wherein at least one layer is made at least in part of synthetic binder fibers which can have an anti-microbial additive added thereto and fibers that are free of said anti-microbial additive blended therewith, and that Emi teaches adding deodorant and copper antifungal additives to synthetic polymer fibers in an amount that would make claim 46 obvious.

Claim 46 has been amended to further clarify the novelty of the present invention, now reciting a limitation "*...having been blended and heated to said melting temperature so as to adhere the anti-microbial additive free fibers and the binder fibers at their crossing points and to adhere anti-microbial additives encapsulated in the low temperature polymer to the anti-microbial additive free fibers...*" Applicants respectfully submit that neither Rock nor Emi discloses or suggests this configuration. Rock first discloses the multi-component, co-extruded fibers illustrated in Figures 1-6, and then describes composite filament configurations that are produced via crimping dissimilar fibers. Emi discloses forming a multi-layer fabric from layers of synthetic yarn rendered hydrophilic, moisture-absorbent yarn material, or combinations thereof by" knitting a plaited construction so that the layers are distinct and separate, yet integrated one with the other." (col. 2, ll. 63-65)

Applicants respectfully submit that neither reference discloses or suggests the structural limitations recited in claim 46, as amended, the advantages of which are described, in particular, in paragraph [0117] of the instant specification. Thus, amended claim 46 is patentable over the cited art.

Claims 47 and 49-50 depend from independent claim 46, as amended. If an independent claim is nonobvious, claims that depend from the independent claim are also nonobvious. *In re Fine*, 837 F.2d 1071, 1071; 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, Applicant respectfully requests reconsideration and withdrawal of this ground for rejection for claims 47 and 49-50.

In light of at least the foregoing, Applicants respectfully submit that claims 46-52 are now in a condition for immediate allowance, and notice thereof is earnestly solicited.

Should there be any questions after reviewing this paper, the Examiner is invited to contact the undersigned at 617-854-4000.

Dated: November 14, 2005

Respectfully submitted,
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